

STATE OF MICHIGAN
COURT OF APPEALS

In re C. N. Thomas, Minor.

UNPUBLISHED
November 17, 2015

No. 326703
Wayne Circuit Court
Family Division
LC No. 14-516605-NA

Before: SAWYER, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals from an order of the circuit court terminating his parental rights to the minor child.¹ We affirm.

The basic underlying facts to this case are not in significant dispute. Respondent's parental rights were terminated under MCL 712a.19b(3)(b)(i), (3)(k)(iii) and (vi). Those sections provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

¹ The mother's rights were not terminated and, at the time of trial in this case, the child was living with his mother.

* * *

(iii) Battering, torture, or other severe physical abuse.

* * *

(vi) Murder or attempted murder.

The basis of the termination under these grounds was the death of the minor child's three-month-old younger brother, Dillon. What is in dispute is whether respondent was responsible for Dillon's death and whether the facts surrounding Dillon's death provide an adequate basis to terminate respondent's parental rights to the minor child.

Dr. Kilak Kesha performed the autopsy on Dillon and testified that he observed a number of abrasions on the body as well as second- and third-degree burns to the tops of his feet. Dillon's x-rays revealed three rib fractures on the right side of his body. In his opinion, they were older fractures that had then been refractured. He testified that it would have taken "a significant amount of force" to cause those fractures, ruling out accidental injury or an injury caused by a child. In Dr. Kesha's opinion, it took the strength of an adult to inflict the injury. He opined that the older fractures were one to two weeks old and that the refractures were new and likely caused by CPR. Dr. Kesha further opined that the cause of death was pneumonia caused by the rib fractures.² He also opined that the manner of death was homicide. With respect to the burns on Dillon's feet, Dr. Kesha indicated that, while the burns were not the cause of death, they likely hastened Dillon's death because of the additional stress that they placed on his body.

Touche Heavens-Woods, a child protective service specialist employed by the Department of Human Services, testified that, in her investigation of Dillon's death, respondent had admitted to Dillon's mother that he was responsible for the burns to Dillon's feet. Specifically, he claimed that he had accidentally spilt hot water on Dillon's feet while respondent was preparing Ramen noodles for dinner. She further testified that the burns were inconsistent with an accidental splash of water.³ Dr. Kesha had also testified that, while he could not identify the source of the burns, they were inconsistent with Dillon's being splashed with a hot liquid.

On appeal, respondent first argues that the trial court erred in finding that there was clear and convincing evidence to support a finding that the statutory grounds for termination existed. We disagree. This Court reviewed the standards with respect to termination of parental rights in *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012):

² Dr. Kesha explained that the rib fractures are very painful, resulting in the child's not wishing to take deep breaths. And taking deep breaths is the body's way of preventing pneumonia. Thus, the fractures prevented deep breathing which led to pneumonia and death.

³ It was after respondent had told Dillon's mother about the burned feet that the mother checked on Dillon and found him not breathing. CPR was administered and Dillon was taken to the hospital, where he died.

A court may terminate a respondent's parental rights if one or more of the statutory grounds for termination listed in MCL 712A.19b(3) have been proven by clear and convincing evidence. Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); MCR 3.977(E)(4). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest" under MCL 712A.19b(5). *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(K). A trial court's decision is clearly erroneous "[i]f although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citations and quotation marks omitted; alteration in original).

Respondent's argument primarily focuses on the fact there is no direct evidence that he caused Dillon's rib fractures and that it is little more than speculation that he was responsible because he was Dillon's primary caretaker while Dillon's mother worked. Similarly, respondent argues that there was inadequate evidence to establish how the burns to Dillon's feet were caused if not by respondent's claim of an accidental hot water spill. But this ignores the fact that Dr. Kesha testified that, while he could not explain the exact source of the burns, they could not have been caused by an accidental spill of hot water as respondent claims. And by respondent's own admission, he was responsible for the burns. Accordingly, we are not left with a definite and firm conviction that the trial court clearly erred in concluding that respondent was responsible for causing those burns. At a minimum, this establishes the statutory grounds for termination under MCL 712A.19b(3)(b)(i), if not (k)(iii). Because only one ground for termination must be established, we need not determine if the evidence supports such a finding under 19b(3)(k).

Respondent next argues that the trial court erred in finding that it was in the child's best interests for respondent's parental rights to be terminated. We disagree. Respondent's argument focuses on his bond with the child and the fact that there was no evidence of injuries to the minor child, as well as the lack of various factors to support the best interests finding. But the trial court did acknowledge that there are a variety of factors to consider, not all of which were present in this case but found that "we have a very overriding factor here." The trial court explained that "overriding factor" as follows:

And that is specifically risk to the child. If the court does not terminate, we know mother will have custody of the child for the time being. We don't know that mother will always have custody of this child. We don't know what the outcome of the father's criminal trial may be.⁴ As indicated, the standard is higher there.

⁴ Respondent was criminally charged in Dillon's death. Based upon information from the Department of Corrections website, it appears that respondent pled nolo contendere to second-

There's no indication one way or another whether father will be convicted or will be exonerated in his criminal trial.

And so we're left with basically the prospect that we have a child that is just over three years old placed with his mother. And is it, is that sufficient safeguard where the court could conclude that it's in the child's best interests not to terminate. Is that sufficient protection that the court could conclude that it's not in his best interests to terminate. And the court would have to say no, it's not.

I mean, we don't know what's going to happen over the next fifteen years while this child is still a minor.

Clearly, there's a risk to the child, given what happened to Dillon. So the standard is only by a preponderance of the evidence that the court has to find that termination is in the child's best interests. And clearly, that standard has been satisfied.

We are not left with a definite and firm conviction that the trial court erred in determining that it was in the minor child's best interests given the risk posed to the child in light of the injuries and death of his baby brother.

Affirmed.

/s/ David H. Sawyer
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood

degree child abuse, MCL 750.136b(3), and involuntary manslaughter, MCL 750.321, and was sentenced to concurrent terms of 2 to 10 years in prison on the child abuse conviction and 5 to 15 years in prison on the manslaughter conviction.